

CHAPTER 31

**DEBT COMPROMISE: SUSPENDING AND TERMINATING COLLECTION ACTIVITY;
DEBT WRITE-OFF AND RETENTION**3101 DEBT COMPROMISE

310101. Authority To Compromise. Only the Department of Justice (DOJ) has authority to compromise debts exceeding \$100,000 exclusive of interest, penalties, and administrative charges. The Secretary of Defense has the authority to delegate and has properly delegated the authority to compromise debts of \$100,000 or less to the Directors of DFAS Centers and other agency heads. Designated DoD Components may compromise debts which do not exceed \$100,000 exclusive of interest, penalties, and administrative charges after deducting amounts paid. No compromise action is authorized on debts referred to the General Accounting Office (GAO) or the DOJ unless the debt is returned to the DoD Component for disposition. DoD Components will not compromise, but will refer to the DOJ, any debts that appear to be based on fraudulence or which are based on a violation of antitrust laws.

310102. Referring Compromise Offers to the GAO and the DOJ. A DoD Component holding a debtor's firm written and substantial compromise offer for a debt less than \$100,000 exclusive of interest, penalties, or administrative charges will refer the matter to the GAO or the DOJ if there is uncertainty whether the offer should be accepted. Referral will include all supporting information. The GAO or the DOJ may act on the offer or provide instructions or advice. If a compromise offer for a debt exceeding \$100,000 exclusive of interest, penalties, and administrative charges is received and is acceptable to the DoD Component, the debt case will be referred to the DOJ using a Claims Collection Litigation Report. Referrals will specify reasons for compromise recommendations.

310103. Compromise Because of Litigative Risks. Designated DoD Components will compromise debts when there is real doubt as to the government's ability to prove its case in court for the full debt amount either because of legal issues involved or a bona fide dispute as to facts. In determining litigative risks, proportionate weight will be given the probable amount of

court costs and attorney fees which may be assessed against the Government under the Equal Access to Justice Act if litigation is unsuccessful. Amounts accepted in compromise under these circumstances should reasonably reflect the probability of prevailing on legal questions involved, probability of full or partial recovery of a judgment paying due regard to availability of witnesses, other evidentiary Government support, and related practical considerations.

310104. Compromise With Joint and Severally Liable Debtors. DoD Component organizations will not attempt to allocate the burden of paying a debt among jointly and severally liable debtors but will liquidate debts as quickly as possible. Compromise agreements taken with one jointly and severally liable debtor will be taken so that the agreement does not release the DoD Component's claim against other debtors. The amount of a compromise with one jointly and severally liable debtor will not be considered binding when determining the amount which will be paid by other debtors.

310105. Compromise Because of Inability To Enforce Collection. Debts will be compromised when the Government will be unable to enforce collection. When making this determination, DoD Components will consider applicable exemptions available to debtors under state and federal laws and uncertainty as to the price collateral or other property might bring at a forced sale. Amounts compromised will bear a reasonable relationship to amounts which can be recovered by enforced collection having regard for exemptions available to debtors and the time collection will take.

310106. Compromise Because Collection Costs Exceed Amounts Recoverable. Debts will be compromised when collection costs do not justify enforced collection of the full amount. Generally, collection costs will be a significant factor in small-debt compromise decisions but will not be a significant factor in large-debt compromise decisions. When determining which debts to pursue, creditor organizations will weigh the positive effect of a vigorous small-debt collection

policy against the cost of collecting debts. Consideration will be given to practical benefits that vigorous collection of some small debts will demonstrate to other debtors that resistance to debt payment is unlikely to succeed. When making compromise decisions under these circumstances, DoD Components will consider an appropriate discount for administrative and litigative collection costs and the time collection will take.

310107. Compromise Because Debtors Are Unable To Pay Full Amount. Debts will be compromised if debtors are unable to pay the full amount in a reasonable time or if debtors refuse to pay in full and the Government would be unable to enforce full collection within a reasonable time. The following factors, as a minimum, will be considered when determining a debtor's ability to pay:

- A. Debtor's age and health.
- B. Debtor's current and potential income.
- C. Debtor's inheritance prospects.
- D. Possibility that assets were concealed or transferred to avoid debt payment.
- E. Availability of assets or income realizable from enforced collection proceedings.

310108. Compromise for a Combination of Reasons. Debts will be compromised using any applicable combination of reasons in this section.

310109. Obtaining Debtor Credit Information. If the DoD Component's files do not contain up-to-date financial information on which to base compromise decisions, credit information will be obtained from commercial credit bureaus and from debtor's statements executed under penalty of perjury.

310110. Compromises Payable in Installments. Compromised debts will be collected in lump sum. However, if installment payments are necessary, the compromising authority will obtain from the debtor, a legally enforceable agreement for reinstatement of the original debt less principle payments, and acceleration of the

total balance due upon default of an installment payment.

310111. Compromises for Other Than Cash. DoD Components will not accept either a percentage of a debtor's profits or stock in a debtor's corporation in compromise of a claim.

3102 SUSPENDING AND TERMINATING COLLECTION ACTIVITY

310201. Authority To Suspend or Terminate Collection Activity. Only the DOJ has authority to suspend or terminate collection action on debts exceeding \$100,000 exclusive of interest, penalties, and administrative charges after deducting amounts paid. Designated organizations may suspend or terminate collection actions on debts not exceeding \$100,000 exclusive of interest, penalties and administrative charges, after deducting amounts paid. No suspension or termination action is authorized on a debt referred to the GAO or DOJ unless the debt is returned to the DoD Component for disposition. DoD Components will refer to the DOJ any debt that appears to be based on fraudulence or which are based on a violation of antitrust laws.

310202. Referring Suspension and Termination Actions to the DOJ. DoD Components authorized to suspend or terminate collection actions are also authorized to refer debts to the DOJ for suspension or termination action. If, after evaluating a debt exceeding \$100,000 according to this section, a Component believes collection action should be suspended or terminated, the debt will be sent to the DOJ according to procedures in chapter 32 of this Volume.

310203. Suspension When Debtors Cannot Be Located. Collection action will be suspended when debtors cannot be located and there is reason to believe future collection action will be sufficiently productive to justify periodic review and action on debts. Every reasonable effort will be made to locate debtors sufficiently in advance of the bar of the statute of limitations to permit timely filing of suit if such action is warranted.

310204. Suspension When Debtors Are Unable To Pay. Collection action will be suspended when debtors own no equity in real or personal property and are unable to make payments or effect compromise at the time but future pros-

pects justify retention of the debt for periodic review and action and:

A. the applicable statute of limitations has been suspended;

B. future collection can be made by offset notwithstanding the statute of limitations or the 10-year offset limitation prescribed for salary and administrative offset in this Regulation;

C. the debtor agrees to pay interest on the debt amount on which collection is suspended; and

D. suspension is likely to enhance a debtor's ability to pay the full debt principal and accrued interest at a later date.

310205. Suspension When A Permissive Waiver Statute Applies. Collection action will be suspended even though waiver statutes are permissive and do not prohibit collection action while waiver requests are being considered if:

A. there is reasonable probability that waiver will be granted or that debts, in whole or part, will be found not owing;

B. DoD interests will be protected, if there is a reasonable assurance that debts would be recovered if debtors do not prevail; or

C. collection will cause undue financial hardship.

310206. Suspension When Refunds Would Not Be Authorized. Collection action will be suspended if an applicable statute or regulation does not authorize refund of amounts collected before waiver determination if the waiver authority should act favorably on the request. Inability to make a refund will not be a factor in determining to suspend collection if a waiver request and surrounding circumstances are frivolous and the request was made apparently to delay debt collection.

310207. Terminating Collection of Erroneous Debts. Collection will be terminated on debts which are clearly erroneous or clearly without legal merit.

310208. Termination When Debtors Are Unable To Pay. Collection will be terminated and case files closed when it becomes clear the DoD Component cannot collect or enforce collection of any significant sum because debtors are unable to pay. Determinations will be made giving due regard to judicial remedies available to the Government, debtors' future financial prospects, federal and state legal exemptions available to debtors, and applicable statutes of limitations. The following factors applicable to debtors will be considered:

A. Age and health.

B. Current and potential income.

C. Inheritance prospects.

D. Possibility that assets were concealed or transferred to avoid debt payment.

E. Availability of assets or income realizable from enforced collection proceedings.

310209. Termination Because Costs Exceed Amounts Recoverable. Debt collection will normally be terminated when collection costs will exceed the amount recoverable. Creditor organizations will weigh practical benefits that vigorous collection of some of these debts will demonstrate to other similar debtors that resistance to debt payment is unlikely to succeed.

310210. Termination Because Debtors Cannot Be Located. Collection action will be terminated when debtors cannot be located; the applicable statute of limitations has run; and prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify debt retention.

3103 DEBT WRITE-OFF, CLOSE-OUT, AND RETENTION

310301. General. Designated DoD Components will develop write-off procedures that identify and remove uncollectible accounts from accounts receivable records and close-out procedures that discontinue collection activity. These procedures will improve accounting for the cost of collection programs and allow management to focus efforts on accounts most likely to be collected.

310302. Debt Write-Off. Debts will be written off when:

- A. A judgement was obtained but full or partial debt collection could not be made.
- B. A debtor was unable to pay.
- C. Collection costs would exceed the amount recoverable.
- D. A debtor could not be located and the statute of limitations has expired.
- E. A collection agency was unable to collect a debt and returned the debt to the referring organization with documentation sufficient to demonstrate that further collection action would be futile.

310303. Debt Close-Out. DoD Components shall close out written-off accounts and remove the accounts from other active receivables.

A. Maintain subsidiary records of accounts that may be collected by offset against future benefit claims.

★ B. Maintain an IRS referral log by calendar year which contains a record of amounts written-off and debtor-identifying information for income reporting on IRS Form 1099-C, "Canceled Debt" (see paragraph 310304 below).

C. Collection action will be re-instituted on closed-out accounts if there is subsequent evidence that a debtor has new ability to repay.

310304. Debt Retention. Unless documentary evidence shows there is no potential for future collection, debts written off for which collection costs are not a factor, will be retained in an inactive file until the 10-year administrative offset limitation expires. Inactive debts will be periodically matched against the Defense Manpower Data Center United States-employee files and collected by salary or administrative offset when debtors are found to be employed by the United States. These debts may be collected by other means required or authorized by this Regulation if the 6-year statute of limitations has not expired. DoD Components that write off or compromise debts will maintain logs for later reporting to the IRS. Debt write offs and compromises totaling \$600 or more for an individual debtor in a calendar year will be reported to the IRS as income to the debtor. Write offs and compromises will be included in the total only if the debtor received something of value.